

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DAVID M. CARLOCK,

Plaintiff,

vs.

SOUTH DAKOTA SOYBEAN  
PROCESSORS, LLC,

Defendant.

CIV. #21- 4226

**COMPLAINT AND DEMAND  
FOR TRIAL BY JURY**

COMES NOW the Plaintiff, and for his Complaint against the above-named Defendant, states and alleges as follows:

**PARTIES**

1. Plaintiff David M. Carlock ("Plaintiff") is, and at all times was, a resident of Bath, Illinois.

2. Defendant South Dakota Soybean Processors, LLC ("Defendant") is a limited liability company duly organized and existing under the law of the State of South Dakota, with its principal place of business in Volga, South Dakota. Defendant owns and operates a soybean processing plant and a soybean oil refinery in Volga, South Dakota and St. Lawrence, South Dakota. Upon information and belief, no member of the LLC has citizenship in Illinois at the time of this lawsuit.

**JURISDICTION AND VENUE**

3. Plaintiff David M. Carlock invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 based upon the diversity of the parties. The amount in controversy exceeds the sum of \$75,000.00.

4. A substantial part of the events giving rise to this action occurred in South Dakota, and thus venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

### **FACTS**

5. In the early months of 2019, Plaintiff David M. Carlock's employer was hired to perform work for Defendant at its facilities in Volga, South Dakota and St. Lawrence, South Dakota.

6. On February 13, 2019, Plaintiff was performing his work for his employer at Defendant's plant in St. Lawrence, South Dakota when he suddenly slipped and fell on snow and/or ice resulting in an injury to his left shoulder.

7. At the time of the fall, Defendant had provided no, or minimal, snow and ice removal and maintenance.

8. On March 5, 2019, Plaintiff was performing his work for his employer at Defendant's plant in Volga, South Dakota when he suddenly slipped and fell and snow and/or ice resulting in an injury to his right shoulder.

9. At the time of the fall, Defendant had provided no, or minimal, snow and ice removal and maintenance.

10. As a result of the falls, Plaintiff sought medical treatment. For his left shoulder, Plaintiff was diagnosed with rotator cuff tear, subacromial decompression, distal clavicle excision and biceps tenodesis. For his right shoulder, he was diagnosed with a rotator cuff tear, biceps tenotomy, subacromial decompression, distal clavicle excision, superior capsular reconstruction and later suffered a pulmonary embolism as a related complication. Plaintiff underwent surgery on both shoulders as result of his injuries. He also sustained permanent impairment and disability, disfigurement and scarring, past, present, and future pain and suffering, loss of enjoyment of the

capacity of life, emotional distress, loss of past and future earnings, past and future medical costs and expenses, and other general and special damages compensable under South Dakota law.

**COUNT I**  
***Premises Liability***

11. Plaintiff hereby realleges paragraphs 1-10 of this Complaint and hereby incorporates them by reference as if fully set forth herein.

12. Defendant owed a duty to Plaintiff to exercise reasonable and ordinary care and awareness in the maintenance and control of its premises in St. Lawrence and Volga, including, but not limited to, a duty to maintain said premises in a safe and reasonable manner, a duty to remove and/or repair any dangerous condition on said premises, and a duty to maintain the premises free and clear of snow and/or ice.

13. Defendant breached its duties owed to Plaintiff by, including but not limited to, negligently maintaining its premises, negligently controlling its premises, failing to maintain its premises in a reasonably safe condition, failing to remove snow and/or ice from its premises, failing to apply salt, sand, and/or ice melt to its premises, failing to remove dangerous conditions on its premises, and/or failing to warn of dangerous condition(s) on its premises.

14. Defendant owned and controlled its premises on which Plaintiff was injured and knew or should have known of the dangerous condition(s), and should have expected that Plaintiff would not have discovered or realized the danger or would fail to protect himself against it.

15. Plaintiff's injuries were reasonably foreseeable to Defendant.

16. As a direct and proximate cause of Defendant's negligence, Plaintiff has sustained injuries and damages as previously set forth.

WHEREFORE, Plaintiff respectfully prays for damages against Defendant as follows:

- (1) For Plaintiff's compensatory, general and special damages in an amount that the jury to compensate Plaintiff for all injuries sustained as a result of the conduct of Defendant described above;
- (2) For Plaintiff's costs and disbursements;
- (3) For pre-judgment and post-judgment interest; and
- (4) For such other and further relief as the Court determines to be just and proper.

Dated this 28<sup>th</sup> day of December, 2021.

**JOHNSON, JANKLOW, ABDALLAH,  
REITER, & PARSONS, LLP**

**BY** 

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*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

  
Jami J. Bishop

JS 44 (Rev. 09/19)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

David M. Carlock

**DEFENDANTS**

South Dakota Soybean Processors LLC

(b) County of Residence of First Listed Plaintiff Mason County, IL  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Jami J. Bishop of Johnson, Janklow, Abdallah Reiter LLP, Post Office  
Box 2348, Sioux Falls, SD 57101-2348,  
(605)338-4304

Attorneys (If Known)  
Unknown at this time

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. § 1332/28 U.S.C. § 1391

Brief description of cause:  
 slip and fall

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_